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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JULY 30, 2001

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE010422

Ex Parte: In the matter  
concerning the Rules Governing  
Certification and Maintenance  
of Notification Centers

ORDER ESTABLISHING INVESTIGATION AND INVITING COMMENTS

Section 56-265.16:1 of the Code of Virginia was amended by House Bill No. 720 (1989 Va. Acts ch. 448) and directed the State Corporation Commission ("Commission") to promulgate rules governing the certification of notification centers and to certificate notification centers.<sup>1</sup> Accordingly, the Commission adopted Rules Governing the Certification of Notification Centers ("Rules"), effective October 3, 1990.<sup>2</sup>

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<sup>1</sup> Section 56-265.15 of the Underground Utility Damage Prevention Act ("Act") defines "notification center" as

an organization whose membership is open to all operators of underground facilities located within the notification center's designated service area, which maintains a data base, provided by its member operators, that includes the geographic areas in which its member operators desire transmissions of notices of proposed excavation, and which has the capability to transmit, within one hour of receipt, notices of proposed excavation to member operators by teletype, telecopy, personal computer, or telephone.

<sup>2</sup> See Commonwealth of Virginia, At the relation of the State Corporation Commission, Ex Parte: In the matter of adopting Rules Governing the

The 2001 General Assembly amended § 56-265.16:1 of the Code of Virginia effective July 1, 2001. See 2001 Va. Acts ch. 399. As amended, this statute directs the Commission to determine "the optimum number of notification centers in the Commonwealth." Further, it requires that if the Commission determines that there should be more than one notification center in the Commonwealth, the Commission "shall define the geographic area to be served by each notification center." Section 56-265.16:1 D of the Code of Virginia also provides that

[e]very Commission action regarding the optimum number of notification centers, the geographic area to be served by each notification center, the promulgation of notification center certification regulations, and the grant, amendment, or revocation of notification center certifications shall be made in furtherance of the purpose of preventing or mitigating loss of, or damage to, life, health, property or essential public services resulting from damage to underground utility lines.

The statute further directs the Commission, when approving or revoking any notification center certification to:

1. Ensure protection for the public from the hazards that this chapter [Chapter 10.3 of Title 56] is intended to prevent or mitigate;
2. Ensure that all persons served by the notification center receive an acceptable level of performance, which level

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Certification of Notification Centers Pursuant to § 56-265.16:1 of the Code of Virginia, Case No. PUE900033, 1990 S.C.C. Ann. Rept. 344.

shall be maintained throughout the period of the notification center's certification; and

3. Require the notification center and its agents to demonstrate financial responsibility for any damages that may result from their violation of any provision of this chapter. Such requirement may be met by purchasing and maintaining liability insurance on such terms and in such amount as the Commission deems appropriate.

The Commission, therefore, is initiating this proceeding to assist it in developing appropriate policies and rules applicable to the certification of a notification center and maintenance of an acceptable level of performance by a notification center once it is certified. This Order seeks public comment on a variety of issues identified in Attachment A hereto, including the Commission's authority to adopt specific regulations concerning the identified issues.

Comments concerning the issues set out in Attachment A should be specific, detailing the roles to be played by the Commission, the notification center, and other stakeholders. To the extent possible and practicable, interested parties should include with their responses to this Order, proposed Rules corresponding to their comments on the issues set forth in Attachment A to the Order. Such concrete proposals will assist the Commission in accomplishing the goals of this proceeding.<sup>3</sup>

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<sup>3</sup> To aid the Commission, each request for comments is lettered and numbered in Attachment A. Interested parties are requested to correlate their responses

Following a thorough review of any responses and comments received herein, including a review of any suggested Rules, we will direct our Staff to propose revisions to the Rules regarding the certification of notification centers, where appropriate. We will seek further public comment on Staff's proposals, and conduct further proceedings as may be necessary herein.

Therefore, we find that this matter should be docketed; that notice of this rulemaking should be published in major newspapers of general circulation throughout the Commonwealth; that this Order and Attachment A thereto should be forwarded to the Virginia Register of Regulations; that interested persons should be afforded an opportunity to file written comments concerning the issues identified in Attachment A to this Order; and that the Staff should file a report responding to the comments filed herein and proposing further revisions to the Rules, where appropriate.

Accordingly, IT IS ORDERED THAT:

- (1) This matter be docketed and assigned Case No. PUE010422.
- (2) Interested persons may obtain a copy of this Order, together with a copy of the issues upon which comment is sought (Attachment A hereto), by directing a request in writing for the

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to the lettering and numbering system set forth in Attachment A to this Order in their comments.

same on or before September 5, 2001, to Massoud Tahamtani, Assistant Director, Division of Energy Regulation, State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23218.

(3) A copy of this Order and the issues identified in Attachment A hereto shall be made available for public review at the Commission's Document Control Center, located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, during the Commission's regular hours of operation, Monday through Friday, from 8:15 a.m. to 5:00 p.m. Interested persons may also review a copy of the Order and Attachment A thereto on the Commission's website, <http://www.state.va.us/scc/caseinfo/orders.htm>.

(4) Interested parties wishing to file comments concerning the issues identified in Attachment A shall file an original and fifteen (15) copies of such comments in writing on or before September 28, 2001, with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and shall refer to Case No. PUE010422.

(5) On or before August 25, 2001, the Commission's Division of Information Resources shall cause the following notice to be published as classified advertising on two occasions in newspapers of general circulation throughout the Commonwealth of Virginia:

NOTICE OF INVESTIGATION AND INVITING  
COMMENTS BY THE STATE CORPORATION COMMISSION  
TO CONSIDER REVISIONS TO THE RULES FOR  
CERTIFICATION AND MAINTENANCE OF  
NOTIFICATION CENTERS  
CASE NO. PUE010422

In 1990, the State Corporation Commission ("Commission") adopted Rules Governing the Certification of Notification Centers pursuant to the authority granted to it by § 56-265.16:1 of the Code of Virginia. A notification center is an organization whose membership is open to all utility operators ("operators") of underground utility lines located within the notification center's designated service area. The notification center maintains a data base, provided by its member operators, that includes the geographic areas in which utility operators desire transmissions of notices of proposed excavation. The notification center notifies the operators when proposed excavations are planned in locations where the operators have underground utility facilities.

The 2001 General Assembly amended § 56-265.16:1 of the Code of Virginia, changing the criteria that a notification center must meet in order to be certificated by the Commission. As amended, § 56-265.16:1 of the Code of Virginia directs the Commission in approving or revoking any notification center certification to: (i) ensure protection for the public from the hazards the Underground Utility Damage Prevention Act, Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia ("the Act") is intended to prevent or mitigate; (ii) ensure that all persons served by the notification center receive an acceptable level of performance, which level shall be maintained throughout the period of the notification center's certification; and (iii) require the notification center and its agents to demonstrate financial

responsibility for any damages that may result from their violation of any provision of the Act. Such requirement may be met by purchasing and maintaining liability insurance on such terms and in such amounts as the Commission deems appropriate.

The Commission's present Rules Governing Certification of Notification Centers, 20 VAC 5-300-90 ("Rules"), were adopted in 1990, before the amendment of § 56-265.16:1 of the Code of Virginia. Consequently the Commission is initiating a proceeding to assist it in developing appropriate rules regarding the certification and maintenance of notification centers. In this regard, the Commission is soliciting comments on how the existing Rules should best be revised, if at all, regarding certification of a notification center and maintenance of an acceptable level of performance by a notification center once it is certified.

A copy of the Order Establishing Investigation and Inviting Comments, together with the issues upon which comment is sought, may be reviewed from 8:15 a.m. to 5:00 p.m. Monday through Friday, in the State Corporation Commission's Document Control Center, located at 1300 East Main Street, Tyler Building, First Floor, Richmond, Virginia 23219. Interested persons may obtain a copy of the Commission's Order, together with the issues upon which comment is sought (Attachment A to the Order) by directing a written request for a copy of same on or before September 5, 2001, to Massoud Tahamtani, Assistant Director, Division of Energy Regulation, State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23218, and referring to Case No. PUE010422. Interested persons may also obtain a copy of the Order and Attachment A from the Commission's website, <http://www.state.va.us/scc/caseinfo/orders.htm>.

Any person who wishes to comment upon the issues identified in Attachment A to the

Commission's Order Establishing Investigation and Inviting Comment shall file an original and fifteen (15) copies of such comments with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before September 28, 2001, and shall refer to Case No. PUE010422.

All written communications to the Commission regarding this proceeding shall refer to Case No. PUE010422, and shall be directed to the Clerk of the State Corporation Commission, at the address set forth above.

THE DIVISION OF ENERGY REGULATION OF THE  
STATE CORPORATION COMMISSION

(6) On or before November 9, 2001, the Division of Energy Regulation shall file a report, summarizing and responding to the comments received herein, and proposing revisions to the Rules, where appropriate. The Division of Energy Regulation shall mail a copy of its report to all parties of record.

(7) The Commission's Division of Information Resources shall forthwith cause this Order and Attachment A thereto to be forwarded for publication in the Virginia Register of Regulations.

(8) On or before October 26, 2001, the Division of Information Resources shall file with the Clerk of the Commission proof of the publication of notice required in Ordering Paragraph (5) herein.



**ISSUES RELATING TO THE  
CERTIFICATION AND MAINTENANCE OF  
NOTIFICATION CENTERS UPON WHICH  
COMMENT IS SOUGHT**

**I. APPLICATION FOR CERTIFICATION OF NOTIFICATION CENTERS**

- A. 1. Rule 20 VAC 5-300-90 I of the Commission's Rules governing certification of notification centers provides in pertinent part that

[a]n application for a certificate may be submitted for any geographic area (i) for which a certificate has been previously granted by the Commission, or (ii) in which a notification center exempt from the requirements of § 56-265.16:1 of the Code of Virginia is currently operating, if such application is supported by the operators of the underground facilities responsible for more than half of the ticket volume applicable to Virginia of the existing notification center during the most recent 12-month period preceding the filing of the application for which data is available. . . .

Should the requirement that an application be supported by operators of the underground facilities responsible for more than half of the ticket volume applicable to Virginia of the existing notification center be retained as a condition for filing an application for certification of a notification center?

2. How do the requirements of existing Rule 20 VAC 5-300-90 I affect the protection of the public against loss of, or damage to, life, health, property, or essential public services resulting from damage to underground utility lines?

3. What information about an applicant's operational plan for a notification center should be provided to the Commission when considering an application for a certificate to become a notification center?

- a. Should the Commission require information about the vendors and agents a notification center may plan to use to carry out its notification functions?
  - b. What information about a notification center's vendors and agents should the Commission require?
  - c. Should the Commission require information about the notification center's training of its employees involved in the center's operation?
  - d. Should the Commission require information relative to procedures the notification center uses to verify an operator's data provided to the notification center in accordance with Commission's Rule 20 VAC 5-309-130 of the Rules for Enforcement of the Underground Utility Damage Prevention Act?
  - e. Should the Commission require information relative to specific procedures the notification center uses to reduce over-notification?
  - f. Should the Commission require a notification center to file a copy of its current disaster recovery plan, which, when implemented, would allow the center to continue its operation in the event of a disaster?
  - g. Should the Commission require information from the notification center regarding the center's quality standards for the purpose of promoting accuracy, cost effectiveness and efficiency?
4. What evidence should be required of a notification center and its agents to demonstrate financial responsibility for damages that may result from a notification center or its agent's violation of the provisions of the Underground Utility Damage Prevention Act, Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia?
5. How much liability insurance and what kind of liability insurance should be required of an applicant for certification as a notification center?

## **II. NUMBER OF NOTIFICATION CENTERS IN THE COMMONWEALTH**

- B. 1. What criteria should the Commission consider to determine the optimum number of notification centers in the Commonwealth?
2. What advantages or disadvantages are there to having more than one notification center serving the Commonwealth?
3. What advantages or disadvantages are there to having a single notification center serve the Commonwealth?
4. If the Commission determines that there shall be more than one notification center in the Commonwealth, identify the criteria that the Commission should consider when defining the geographic area to be served by each notification center.
5. If the Commission determines that there shall be more than one notification center to serve the Commonwealth, should the Commission require a single statewide toll-free number for contacting the notification centers regarding a proposed excavation?

## **III. MAINTENANCE OF AN EXCAVATOR-OPERATOR INFORMATION EXCHANGE SYSTEM**

- C. 1. Should the Commission require a notification center to file with the Commission annually the center's operational plan to keep itself apprised of the center's activities that may impact its operation in the future?
2. Should a notification center be required to advise the Commission in writing when it proposes to change its agents or vendors that assist the center in its primary operating notification functions?
3. Notification centers currently use a set of codes and subcodes for the operation of the Ticket Information Exchange ("TIE") System. Should the Commission formally recognize these codes and subcodes in any rules it adopts?
4. Should the TIE System be "locked up" at a certain time after the original notification to prevent changing responses by the operator or locator to the TIE? If so, how long after the original notification should the TIE System be locked up to prevent operators or locators from changing responses?

5. Should notification centers provide users the means to permit remote data entry for operators, locators, and excavators?

6. The current Rules require a center to provide emergency service 365 days a year, 24 hours per day and regular service Monday through Friday, 7:00 a.m. through 5:00 p.m., excluding designated holidays. Should hours of operation for regular service be expanded? If the hours of operation for regular service should be expanded, what should the hours of operation for regular service for a notification center be?

#### **IV. GENERAL ISSUES**

D. 1. Should the Commission require a notification center to file with the Commission annually the center's plan for public education/awareness regarding damage prevention?

2. Should the Commission regularly review a notification center's governing structure to ensure that the center functions to the best benefit of the entire community and in furtherance of the purpose of the Act?

3. Are there other issues that should be considered by the commission relative to certification of and maintenance of a notification center? State why these issues should be considered.

4. Comment on whether the Commission's authority to promulgate rules regarding notification centers permits the Commission to adopt specific regulations relating to each of the questions set out above. Set out all legal authority supporting your response as well as detailed comments concerning the merits of adopting specific regulations on each of the foregoing issues.